



Federal Transit Administration

49 CFR Part 659

[Docket No. FTA–2022–0003]

RIN 2132-AB39

Rail Fixed Guideway Systems; State Safety Oversight; Rescission

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking rescinds an FTA regulation for State Safety Oversight requirements. The statutory basis for this regulation was rescinded by legislation in 2012.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Emily Jessup, Office of Chief Counsel, (202) 366-8907 or Emily.Jessup@dot.gov. Office hours are from 9 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Background

Part 659 in title 49 of the Code of Federal Regulations contains State Safety Oversight (SSO) requirements for rail fixed guideway systems. These regulations were authorized by 49 U.S.C. 5330, State Safety Oversight, which was repealed by Section 20030(e) of the Moving

Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141). In 2016, FTA replaced 49 CFR part 659 with a new SSO final rule, codified at 49 CFR part 674 (81 FR 14230). 49 CFR 674.9(b) provides that FTA will rescind the regulations codified at Part 659 no later than April 15, 2019.

Discussion of the Changes

This action rescinds 49 CFR part 659, State Safety Oversight (SSO) requirements for rail fixed guideway systems, because the statutory basis for these regulations was repealed by MAP-21. These regulations were replaced with a new SSO final rule, codified at 49 CFR part 674. The regulations at part 674 are intended to carry out several explicit statutory mandates to strengthen the States' oversight of the safety of their Rail Transit Agencies (RTAs) enacted through Section 20021 of MAP-21 and codified at 49 U.S.C. 5329. 49 CFR 674.9(b) provides that FTA will rescind the regulations codified at part 659 no later than April 15, 2019, three years following the effective date of Part 674. The three-year delayed rescission permitted RTAs to have a part 659 System Safety Program Plan in place until the Public Transportation Agency Safety Plan (PTASP) regulation deadline (See 49 CFR 673.11(e)). FTA delayed the rescission, in part due to the deferred enforcement of the PTASP regulation deadline. FTA's most recent PTASP notice of enforcement discretion expired on July 20, 2021 and all applicable RTAs have certified their compliance with the PTASP regulation. Therefore, it is now timely to rescind the part 659 regulations.

Good Cause for Dispensing With Notice and Comment and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

FTA finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions (i.e., the rule simply carries out the statutory repeal included in MAP-21).

The statutory language does not require regulatory interpretation to carry out its intent, and comments cannot alter the regulation given that the statute abrogated its purpose. Further, the delayed effective date is unnecessary because the removal of these safety regulations was already made effective by MAP-21 and the publication of new safety regulations at 49 CFR part 674. Accordingly, FTA finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive notice and opportunity for comment and the delayed effective date.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866 and 13563 to improve regulation.

Regulatory Flexibility Act

Because FTA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601- 612) do not apply. FTA evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This

rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States’ ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

FTA has analyzed this rule under the Paperwork Reduction Act and believes that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cf) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address

compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects in 49 CFR Part 659

Grant Programs—Transportation, Mass Transportation, Reporting and recordkeeping requirements, Safety, Security, Transportation

Nuria I. Fernandez,

Administrator.

PART 659—[REMOVED AND RESERVED]

In consideration of the foregoing, and under the authority of 49 U.S.C. 5329, Public Law 112-141, and 49 CFR 1.91, FTA amends 49 CFR chapter VI by removing and reserving part 659.